

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

VALLEY FORGE INSURANCE)	
COMPANY, a Pennsylvania Corporation)	
)	Civil Action No.: 1:14-cv-792- MRB
Plaintiff,)	
)	Judge Michael R. Barrett
vs.)	
)	
FISHER KLOSTERMAN, INC., a Delaware)	
Corporation)	
)	
Defendant.)	

**PLAINTIFF VALLEY FORGE INSURANCE COMPANY’S
REPLY IN FURTHER SUPPORT OF ITS MOTION FOR LEAVE TO FILE ITS
MEMORANDUM IN SUPPORT OF ITS DISPOSITIVE MOTION IN EXCESS
OF TWENTY PAGES AND LEAVE TO FILE IT UNDER SEAL**

Fisher Klosterman, Inc. (“FKI”) fails to provide any valid reason for this Court to deny Valley Forge Insurance Company’s (“Valley Forge”) motion to file its Memorandum of Law in support of its summary judgment in excess of twenty pages. FKI does not dispute that its conduct regarding Valtech, at issue in Valley Forge’s anticipated summary judgment motion, spans four years and is fact intensive. Given the time span and facts required to resolve the issue, a Memorandum of Law of no more than 30 pages is reasonable. Further, FKI has not set forth any evidence that it would be prejudiced by this Court granting Valley Forge’s motion.

Rather than addressing the issue at hand, FKI attempts to recast this case to its own liking. In the process, FKI discusses the contents and cites to documents in the public record which are **under seal in this case**, in clear violation of the Court Orders entered in this case.

Specifically, FKI reveals the contents and quotes from this Court’s Order entered on April 26, 2016 in the public record. (FKI’s Opp., pp. 1-2.) However, the Court’s Order was specifically filed under seal. (Doc # 81.) Most certainly FKI knew it was revealing information under seal in the public

record because each page of the Order contains a header reminding the reader that the Order was under seal. FKI's intentional violation of this Court's Order should not be tolerated.

FKI then claims that Valley Forge represented to this Court "that factual issues preclude entry of summary judgment on the duty to cooperate." (FKI's Opp., p. 2-3.) First, Valley Forge's opposition to FKI's Cross-Motion for Summary Judgment, filed on April 22, 2015, was filed under seal. (Doc # 41.) As such, FKI's claimed representation of Valley Forge's position set forth in the public record clearly violates the Court's Protective Order entered in this case. Moreover, FKI's representation of Valley Forge's position is simply not accurate. (*See* Doc # 33, pp. 20-21.)

FKI then attempts to cast the issues in this case by claiming that only two questions remain. (FKI's Opp.) Yet, FKI fails to acknowledge that on February 29, 2016, Valley Forge moved to amend its complaint, and again on April 29, 2016, Valley Forge move to file a second amended complaint. (Doc # 61 and # 83.) Those motions are still pending.

FKI then claims that "[d]iscovery" has been stayed since June 2016," citing Minute Entry dated June 22, 2016. (FKI's Opp., p. 2.) That claim is factually not true and the Minute Entry does not support such claim. Indeed, FKI produced documents from the Valero Suit to Valley Forge on July 1, 2016. What is true is that there are discovery disputes between the parties which need to be resolved to move discovery forward in his case.

In short, FKI fails to provide any valid reason for this Court to deny Valley Forge's motion to file its Memorandum of Law in support of its summary judgment in excess of twenty pages. FKI's attempt to recast the status of this case in clear contradiction to the facts should be disregarded by this Court.

WHEREFORE, for the reasons set forth herein and in Valley Forge's Memorandum in Support, Valley Forge requests leave to file a Memorandum of Law in support of its Motion for

Summary Judgment with a page total of no more than 30 pages. Valley Forge further requests leave to file its dispositive motion and corresponding exhibits under seal.

Dated: March 17, 2017.

Respectfully submitted,

/s/Thomas B. Bruns

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**ATTORNEYS FOR VALLEY FORGE
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 17, 2017, I electronically filed Plaintiff Valley Forge Insurance Company's Reply in Further Support of Its Motion For Leave To File Its Memorandum In Support Of Its Dispositive Motion In Excess Of Twenty Pages And Leave To File It Under Seal with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/Thomas B. Bruns
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